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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, Plaintiff, v. The UNITED STATES FISH AND WILDLIFE SERVICE and DIRK KEMPTHORNE, Secretary of the United States Department of the Interior, Defendants.	No. 3:07cv02379-W (NLS) **ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Federal Defendants in this action, the United States Fish and Wildlife Service and Dirk Kempthorne, Secretary of the United States Department of the Interior (collectively "Service"), enter their Answer to the above-captioned Complaint for Declaratory and Injunctive Relief ("Complaint") as follows:

I. INTRODUCTION

1. The allegations in the first sentence of paragraph 1 are characterizations of Plaintiff's case which require no response. The allegations in the second sentence of paragraph 1 are conclusions of law which require no response. The allegations in the third sentence of paragraph 1 purport to characterize the life history of spreading navarretia as described in the proposed and final critical habitat rules for the species. 69 Fed. Reg. 60,110 (Oct. 7, 2004); 70 Fed. Reg. 60,658 (Oct. 18, 2005). These documents speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the documents are denied. In response to the allegations in the fourth sentence of paragraph 1, Defendants aver that the Federal Register notice of listing of spreading navarretia was published on October 13, 1998, that the listing rule became effective on November 12, 1998, and that the correct citation of the listing rule is 63 Fed. Reg. 54,975 (Oct. 13, 1998). The allegations in the fifth sentence of paragraph 1 purport to characterize the life history of thread-leaved brodiaea as described in the proposed and final critical habitat rules for the species. 69 Fed. Reg. 71,284 (Dec. 8, 2004); 70 Fed. Reg. 73,820 (Dec. 13, 2005). These documents speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the documents are denied. In response to the allegations in the fourth sentence of paragraph 1, Defendants aver that the Federal Register notice of listing of thread-leaved brodiaea was published on October 13, 1998, that the listing rule became effective on November 12, 1998, and that the correct citation of the listing rule is 63 Fed. Reg. 54,975 (Oct. 13, 1998). The allegations in the seventh and eighth sentences of paragraph 1 are conclusions of law or characterizations of Plaintiff's case which require no response.

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II. JURISDICTION AND VENUE

2. The allegations in paragraph 2 are conclusions of law which require no response.

3. The allegations in paragraph 3 are conclusions of law which require no response.

4. In response to the allegations in the first sentence of paragraph 4, Defendants admit receiving a letter dated August 28, 2007 purporting to provide notice of intent to sue, and aver that the letter speaks for itself and is the best evidence of its contents. Any allegations inconsistent with the plain language and meaning of the letter are denied. In response to the allegations in the second sentence of paragraph 4, Defendants admit that they did not respond to the August 28, 2007 letter but otherwise deny the allegations. The allegations in the third and fourth sentences of paragraph 4 are conclusions of law which require no response.

III. RELATED CASES

5. The allegations in paragraph 5 consist of conclusions of law which require no response.

IV. PARTIES

6. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6 concerning Plaintiff Center for Biological Diversity, and on that basis deny the allegations.

7. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 7, and on that basis deny the allegations. Defendants deny the allegations in the third and fourth sentences of paragraph 7.

8. In response to the allegations in paragraph 8, Defendants admit that Plaintiff submitted comments on the proposed critical habitat rules for the spreading navarretia and the thread-leaved brodiaea. Defendants lack information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 8, and on that basis deny the allegations.

9. Defendants deny the allegations in paragraph 9.

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10. Defendants deny the allegations in the first and second sentences of paragraph 10. The allegations in the third and fourth sentences of paragraph 10 are conclusions of law which require no response.

11. Defendants admit the allegations in paragraph 11.

12. Defendants admit the allegations in paragraph 12.

V. FACTS

13. The allegations in paragraph 13 purport to characterize certain provisions of the Endangered Species Act ("ESA"), which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

14. The allegations in paragraph 14 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

15. The allegations in paragraph 15 are conclusions of law which require no response or are allegations purporting to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

16. The allegations in paragraph 16 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

17. The allegations in paragraph 17 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

18. The allegations in paragraph 18 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

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19. The allegations in paragraph 19 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the ESA are denied.

20. The allegations in the first, second, fourth, and fifth sentences of paragraph 20 purport to characterize the life history of spreading navarretia as described in the proposed and final critical habitat rules for the species. 69 Fed. Reg. 60,110 (Oct. 7, 2004); 70 Fed. Reg. 60,658 (Oct. 18, 2005). These documents speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the documents are denied. Defendants lack information or knowledge sufficient to form a belief as to the truth of the of the allegations in the third sentence of paragraph 20, and on that basis deny the allegations.

21. In response to the allegations in the first and second sentences of paragraph 21, Defendants deny that vernal pools are usually found in a gently sloping plain of grassland, but otherwise admit the allegations. The allegations in the third, fourth, fifth and sixth sentences of paragraph 21 purport to characterize the threats analysis and description of life history contained in the proposed and final critical habitat rules for spreading navarretia. 69 Fed. Reg. 60,110 (Oct. 7, 2004); 70 Fed. Reg. 60,658 (Oct. 18, 2005). These documents speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of these documents are denied. In response to the allegations of the seventh sentence of paragraph 21, Defendants aver that the Federal Register notice of listing of spreading navarretia was published on October 13, 1998, that the listing rule became effective on November 12, 1998, and that the correct citation of the listing rule is 63 Fed. Reg. 54,975 (Oct. 13, 1998). Defendants admit the allegations in the eighth sentence of paragraph 21.

22. The allegations in the first, second, third, fourth, fifth, sixth, and seventh sentences of paragraph 22 purport to characterize the life history of thread-leaved brodiaea as described in the proposed and final critical habitat rules for the species. 69 Fed. Reg. 71,284 (Dec. 8, 2004); 70 Fed. Reg. 73,820 (Dec. 13, 2005). These documents speak for themselves and are the best evidence of

their contents. Any allegations contrary to the plain language and meaning of the documents are denied. In response to the allegations in the eighth sentence of paragraph 22, Defendants aver that the Federal Register notice of listing of thread-leaved brodiaea was published on October 13, 1998, that the listing rule became effective on November 12, 1998, and that the correct citation of the listing rule is 63 Fed. Reg. 54,975 (Oct. 13, 1998). Defendants admit the allegations in the ninth sentence of paragraph 22. The allegations in the tenth sentence of paragraph 22 are conclusions of law which require no response.

23. Defendants admit the allegations in the first sentence of paragraph 23. In response to the allegations in the second sentence of paragraph 23, Defendants admit that protection of sufficient critical habitat is essential to the continued existence of the species, but otherwise deny the allegations. The allegations in the third and fourth sentences of paragraph 23 purport to characterize the threats analysis in the final critical habitat rule for the thread-leaved brodiaea. 70 Fed. Reg. 73,820 (Dec. 13, 2005). This document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of the document are denied.

24. Defendants admit the allegations in the first and second sentences of paragraph 24. The allegations in the third sentence of paragraph 24 purport to characterize the Court's order of July 1, 2002 in the matter of Center for Biological Diversity v. Norton, No. 3:01cv02101-IEG (LAB) (S.D. Cal.), which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of the July 1, 2002 order are denied. The allegations in the fourth sentence of paragraph 24 purport to characterize the Court's order of September 9, 2003 in Center for Biological Diversity v. Norton and the Service's proposed critical habitat rule for spreading navarretia. These documents speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the documents are denied.

25. Defendants admit the allegations in the first and second sentences of paragraph 25. The allegations in the third sentence of paragraph 25 purport to characterize the Court's order of July 1, 2002 in the matter of Center for Biological Diversity v. Norton, No. 3:01cv02101-IEG (LAB) (S.D.

Cal.), which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of the July 1, 2002 order are denied. The allegations in the fourth sentence of paragraph 25 purport to characterize the proposed critical habitat rule for thread-leaved brodiaea, a document which speaks for itself and is the best evidence of its contents. Any allegations inconsistent with the plain language and meaning of the document are denied. Defendants further aver that the correct citation for the proposed critical habitat rule for thread-leaved brodiaea is 69 Fed. Reg. 71,284 (Dec. 8, 2004).

26. In response to the allegations in the first sentence of paragraph 26, Defendants deny that the final critical habitat rule for spreading navarretia was published on October 1, 2005, and aver that the final rule was published October 18, 2005. 70 Fed. Reg. 60,658 (Oct. 18, 2005). The allegations in the second and third sentences of paragraph 26 purport to characterize the final listing rule for spreading navarretia, a document which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of the rule are denied. In response to the allegations in the fourth sentence of paragraph 26, Defendants admit that the final rule designates 652 acres of critical habitat, admit that the designated habitat is located in San Diego and Los Angeles Counties, and admit that no critical habitat was designated in Riverside County, but otherwise deny the allegations.

27. Defendants admit the allegations in the first sentence of paragraph 27. The remaining allegations in paragraph 27 purport to characterize the proposed and final critical habitat rules for thread-leaved brodiaea, documents which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language and meaning of the rules are denied.

VI. VIOLATIONS OF LAW

28. In response to the allegations in paragraph 28, Defendants deny that the final critical rule for spreading navarretia was published on October 1, 2005, and aver that it was published October 18, 2005. The allegations in paragraph 28 otherwise purport to characterize the final critical habitat rule for spreading navarretia and the recovery plan for spreading navarretia, documents which speak for

themselves and are the best evidence of their contents. Any allegations inconsistent with the plain language and meaning of these documents are denied.

29. The allegations in paragraph 29 purport to characterize the final critical habitat rule for spreading navarretia, which speaks for itself and is the best evidence of its contents. Any allegations inconsistent with the plain language and meaning of the rule are denied.

30. The allegations in paragraph 30 purport to characterize the final critical habitat rule for thread-leaved brodiaea, which speaks for itself and is the best evidence of its contents. Any allegations inconsistent with the plain language and meaning of the rule are denied.

31. Defendants deny the allegations in paragraph 31.

32. The allegations in the first sentence of paragraph 32 purport to characterize certain provisions of the ESA, which speak for themselves and are the best evidence of their contents. Any allegations inconsistent with the plain language and meaning of the ESA are denied. The allegations in the second and third sentences of paragraph 32 are conclusions of law which require no response.

33. Defendants deny the allegations in the first sentence of paragraph 33. The allegations in the second sentence of paragraph 33 purport to characterize the decision of the United States Court of Appeals for the Ninth Circuit in Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service, 378 F.3d 1059 (9th Cir. 2004). This decision speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of the decision are denied. Defendants admit the allegations in the third sentence of paragraph 33. Defendants deny the allegations in the fourth sentence of paragraph 33.

34. The allegations in paragraph 34 are vague and nonspecific and fail to identify a particular critical habitat rule or economic analysis to which they refer. Therefore Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis deny them.

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VII. FIRST CLAIM FOR RELIEF

35. Defendants' responses to paragraphs 1 through 34 are incorporated herein by reference.

36. Defendants deny the allegations in paragraph 36.

37. Defendants deny the allegations in paragraph 37.

VIII. SECOND CLAIM FOR RELIEF

38. Defendants' responses to paragraphs 1 through 37 are incorporated herein by reference.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

PRAYER FOR RELIEF

The remainder of Plaintiff's Complaint consists of Plaintiff's Prayer for Relief, to which no response is required. To the extent a response may be deemed to be required, Defendants deny that Plaintiff is entitled to the relief requested in its Complaint or to any relief whatsoever.

GENERAL DENIAL

Defendants deny each and every allegation of the Complaint not otherwise expressly admitted, qualified, or denied herein. To the extent that any allegations in Plaintiff's Complaint remain unanswered, Defendants deny such allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.

WHEREFORE, Defendants deny that Plaintiff is entitled to the relief requested, or to any relief whatsoever, and request that this action be dismissed with prejudice, that judgment be entered for the Defendants, and that the Court order such other and further relief as the Court may allow.

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Dated: February 25, 2008

Respectfully submitted,

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